

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**Chris Langer,**

Plaintiff,

v.

**Todd D. Struyk**, in his individual  
and representative capacity as trustee  
of the Struyk Family Trust (08-28-  
96);

**Pamela M. Struyk**, in her  
individual and representative  
capacity as trustee of the Struyk  
Family Trust (08-28-96);

**Pacific Lawnmower Works, Inc.**, a  
California Corporation; and Does 1-  
10,

Defendants.

Case No. **'14CV2057 DMS BGS**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act;  
California Disabled Persons Act;  
Negligence**

Plaintiff Chris Langer complains of Defendants Todd D. Struyk, in his individual and representative capacity as trustee of the Struyk Family Trust (08-28-96); Pamela M. Struyk, in her individual and representative capacity as trustee of the Struyk Family Trust (08-28-96); Pacific Lawnmower Works, Inc., a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

**PARTIES:**

1  
2 1. Plaintiff is a California resident with physical disabilities. He is a  
3 paraplegic who cannot walk and who uses a wheelchair for mobility. He has  
4 a specially equipped van with a ramp that deploys out of the passenger side  
5 of his van and he has a Disabled Person Parking Placard issued to him by the  
6 State of California.

7 2. Defendants are, or were at the time of the incidents, the real property  
8 owners, business operators, lessors and/or lessees for the Pacific Lawn  
9 Mower Works ("Pacific") located at or about 5831 El Cajon Blvd., San  
10 Diego, California.

11 3. Plaintiff does not know the true names of Defendants, their business  
12 capacities, their ownership connection to the property and business, or their  
13 relative responsibilities in causing the access violations herein complained  
14 of, and alleges a joint venture and common enterprise by all such  
15 Defendants. Plaintiff is informed and believes that each of the Defendants  
16 herein, including Does 1 through 10, inclusive, is responsible in some  
17 capacity for the events herein alleged, or is a necessary party for obtaining  
18 appropriate relief. Plaintiff will seek leave to amend when the true names,  
19 capacities, connections, and responsibilities of the Defendants and Does 1  
20 through 10, inclusive, are ascertained.

**JURISDICTION & VENUE:**

21  
22  
23 4. This Court has subject matter jurisdiction over this action pursuant to  
24 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans  
25 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

26 5. Pursuant to pendant jurisdiction, an attendant and related cause of  
27 action, arising from the same nucleus of operative facts and arising out of  
28 the same transactions, is also brought under California's Unruh Civil Rights

1 Act, and the California Disabled Persons Act, which acts expressly  
2 incorporate the Americans with Disabilities Act.

3 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
4 founded on the fact that the real property which is the subject of this action  
5 is located in this district and that Plaintiff's cause of action arose in this  
6 district.

7  
8 **FACTUAL ALLEGATIONS:**

9 7. The Plaintiff went to Pacific in March of 2014, for repair service.

10 8. Pacific is a facility open to the public, a place of public  
11 accommodation, and a business establishment.

12 9. Parking spaces are one of the facilities, privileges and advantages  
13 offered by defendants to their customers at Pacific.

14 10. Unfortunately, although parking spaces are one of the facilities  
15 available to patrons of Pacific, there is not a single compliant handicap-  
16 accessible parking space available for disabled persons.

17 11. Instead, defendants store their forklift, pallets, and trash bin on top of  
18 the only designated parking space reserved for use by disabled persons. As a  
19 result, there were no handicap-accessible parking spaces available for  
20 plaintiff to use on the day of his visit.

21 12. Additionally, the parking space reserved for disabled persons is also  
22 difficult to see because it has faded because the defendants do not maintain  
23 the parking space.

24 13. Defendants have no policy or procedure in place to make sure that the  
25 accessible parking spaces remain maintained and useable in the parking lot.  
26 As such, the parking space reserved for disabled persons is no longer  
27 available for disabled customers.

28 14. The plaintiff personally encountered this problem. This inaccessible

1 condition denied the plaintiff full and equal access and caused him difficulty  
2 and frustration.

3 15. Plaintiff would like to return and patronize Pacific but will be deterred  
4 from visiting until the defendants cure the violation.

5 16. The defendants have failed to maintain in working and useable  
6 condition those features required to provide ready access to persons with  
7 disabilities.

8 17. Given the obvious and blatant violations, the plaintiff alleges, on  
9 information and belief, that there are other violations and barriers on the site  
10 that relate to his disability. Plaintiff will amend the complaint, to provide  
11 proper notice regarding the scope of this lawsuit, once he conducts a site  
12 inspection. However, please be on notice that the plaintiff seeks to have all  
13 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191  
14 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,  
15 he can sue to have all barriers that relate to his disability removed regardless  
16 of whether he personally encountered them).

17 18. Additionally, on information and belief, the plaintiff alleges that the  
18 failure to remove these barriers was intentional because: (1) these particular  
19 barriers are intuitive and obvious; (2) the defendants exercised control and  
20 dominion over the conditions at this location and, therefore, the lack of  
21 accessible facilities was not an “accident” because had the defendants  
22 intended any other configuration, they had the means and ability to make the  
23 change.

24  
25 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
26 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against  
27 all defendants (42 U.S.C. section 12101, et seq.)

28 19. Plaintiff repleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this  
2 complaint.

3 20. Under the ADA, it is an act of discrimination to fail to ensure that the  
4 privileges, advantages, accommodations, facilities, goods and services of  
5 any place of public accommodation is offered on a full and equal basis by  
6 anyone who owns, leases, or operates a place of public accommodation. See  
7 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 8 a. A failure to make reasonable modifications in policies, practices,  
9 or procedures, when such modifications are necessary to afford  
10 goods, services, facilities, privileges, advantages, or  
11 accommodations to individuals with disabilities, unless the  
12 accommodation would work a fundamental alteration of those  
13 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 14 b. A failure to remove architectural barriers where such removal is  
15 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
16 defined by reference to the ADAAG, found at 28 C.F.R., Part  
17 36, Appendix “D.”
- 18 c. A failure to make alterations in such a manner that, to the  
19 maximum extent feasible, the altered portions of the facility are  
20 readily accessible to and usable by individuals with disabilities,  
21 including individuals who use wheelchairs or to ensure that, to  
22 the maximum extent feasible, the path of travel to the altered  
23 area and the bathrooms, telephones, and drinking fountains  
24 serving the altered area, are readily accessible to and usable by  
25 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

26 21. Any business that provides parking spaces must provide a sufficient  
27 number of handicap parking spaces. 1991 Standards § 4.1.2(5). 2010  
28 Standards § 208. According to the 1991 Standards, if a parking lot has

1 between 1 and 25 parking spaces, it must have 1 handicap-accessible  
2 parking space, and it must be van accessible. 1991 Standards § 4.1.2(5)(a).  
3 Under the 2010 Standards, a parking lot with between 1 and 25 spaces, must  
4 have 1 accessible space. 2010 Standards § 208.2 and 1 of them must be van  
5 accessible. Id. at 208.2.4.

6 22. Here, because defendants place property on top of the only space  
7 reserved for use by disabled persons, there are no available handicap-  
8 accessible parking spaces at Pacific. This is a violation of the law.

9 23. A public accommodation must maintain in operable working  
10 condition those features of its facilities and equipment that are required to be  
11 readily accessible to and usable by persons with disabilities. 28 C.F.R. §  
12 36.211(a).

13 24. Here, the failure to ensure that the accessible parking was available  
14 and ready to be used by the plaintiff is a violation of the law.

15  
16 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH**  
17 **CIVIL RIGHTS ACT** (On behalf of plaintiffs and against all defendants)  
18 (Cal Civ § 51-53)

19 25. Plaintiff repleads and incorporates by reference, as if fully set forth  
20 again herein, the allegations contained in all prior paragraphs of this  
21 complaint.

22 26. Because the defendants violated the plaintiffs' rights under the ADA,  
23 they also violated the Unruh Civil Rights Act and are liable for damages.  
24 (Civ. Code § 51(f), 52(a).)

25 27. Because the violation of the Unruh Civil Rights Act resulted in  
26 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
27 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
28 55.56(a)-(c).)

1 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE**  
2 **CALIFORNIA DISABLED PERSONS ACT** (On behalf of plaintiffs and  
3 against all defendants) (Cal Civ. § 54-54.8)

4 28. Plaintiff repleads and incorporates by reference, as if fully set forth  
5 again herein, the allegations contained in all prior paragraphs of this  
6 complaint.

7 29. Because the defendants violated the plaintiff's rights under the ADA,  
8 they also violated the Disabled Persons Act and are liable for damages. (Civ.  
9 Code § 54.1(d), 54.3(a).)

10 30. Because the violation of the Disabled Persons Act resulted in  
11 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are  
12 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §  
13 55.56(a)-(c).)

14  
15 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of  
16 plaintiff and against all defendants)

17 31. Plaintiff repleads and incorporates by reference, as if fully set forth  
18 again herein, the allegations contained in all prior paragraphs of this  
19 complaint.

20 32. The Defendants had a general duty and a duty arising under the  
21 Americans with Disabilities Act and the Unruh Civil Rights Act and  
22 California Disabled Persons Act to provide safe, convenient, and accessible  
23 facilities to the plaintiffs. Their breach of this duty, as alleged in the  
24 preceding paragraphs, has caused injury and damage as alleged above.

**PRAYER:**

Wherefore, Plaintiff prays that this court award damages and provide relief as follows:

1. For injunctive relief, compelling defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the Plaintiffs are not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act and/or the California Disabled Persons Act which damages provide for actual damages and a statutory minimum of \$4,000. Note: a plaintiff cannot recover under both acts, simultaneously, and an election will be made prior to or at trial.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3.

Dated: July 31, 2014

CENTER FOR DISABILITY ACCESS

By: 

Mark Potter, Esq.  
Attorneys for Plaintiff